IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. BEATRIZ AURORA BLACKWELL, Petitioner.	)	2 CA-CR 2006-0175-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20003723

Honorable Richard Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Robert J. Hooker, Pima County Public Defender
By Nancy F. Jones
Tucson
Attorneys for Petitioner

E S P I N O S A, Judge.

¶1 Pursuant to two separate plea agreements, petitioner Beatriz Blackwell was convicted of solicitation of burglary, a class six felony, and armed robbery, a class two felony. The trial court sentenced her to concurrent, presumptive prison terms, the longer of which is 10.5 years, citing as aggravating circumstances Blackwell's lack of remorse and

that she was on pretrial release at the time of the offenses, and as a mitigating factor the circumstances of her childhood. In her petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., more than four years after sentencing,[1] Blackwell claimed that she had been sentenced in violation of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), because the judge, rather than a jury, had found the aggravating circumstances. The trial court dismissed the petition, finding that *Blakely* did not apply retroactively to Blackwell because her convictions had become final well before *Blakely* was decided and because *Blakely* does not apply to presumptive sentences. This petition for review followed. We review the denial of post-conviction relief for an abuse of the trial court's discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Blackwell's conviction became final in August 2001, when the time for filing a petition for post-conviction relief had expired, *see* Rule 32.4(a), Ariz. R. Crim. P., which was well before *Blakely* was decided in June 2004. *See State v. Towery*, 204 Ariz. 386, ¶ 8, 64 P.3d 828, 831-32 (2003) (conviction final when availability of appeal or certiorari exhausted). Blackwell nonetheless contends *Blakely* applies to her because it does not announce a new rule of law, but merely applies the holding established in *Apprendi v. New*

[1]Although not expressly argued as such, we can infer that Blackwell contends her petition is not untimely because *Blakely* constitutes a significant change in the law under Rule 32.1(g), and claims under that subsection of the rule are exempt from the time limits of Rule 32.4(a).

Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000). Relying on *State v. Febles*, 210 Ariz. 589, ¶ 7, 115 P.3d 629, 632 (App. 2005), the trial court correctly found that *Blakely* does not apply retroactively to defendants whose convictions were final before *Blakely* was decided. *See also State v. Sepulveda*, 201 Ariz. 158, ¶ 4, 32 P.3d 1085, 1086 (App. 2001) (declining to retroactively apply *Apprendi*). Although Blackwell acknowledges that the trial court's ruling is consistent with *Febles*, she contends *Febles* was wrongly decided, *Blakely* should be applied to her case, and her right to have a jury determine aggravating circumstances beyond a reasonable doubt was violated. We disagree. We have reached the same conclusion Division One did in *Febles*. *See State v. Molina*, 211 Ariz. 130, ¶ 14, 118 P.3d 1094, 1098 (App. 2005).

¶3 We also reject Blackwell's argument that *Blakely* applies to her even though she received presumptive sentences. In *State v. Johnson*, 210 Ariz. 438, ¶ 10, 111 P.3d 1038, 1041 (App. 2005), this court decided that, when the sentence imposed in a noncapital case does not exceed the statutory maximum allowed by the jury verdict alone, which is the presumptive sentence in Arizona, the trial court does not violate the requirements of *Blakely* and *Apprendi* if it considers sentencing factors not found by a jury to determine a defendant's sentence. Because that is precisely what happened here, we conclude the trial court did not abuse its discretion by denying relief on this claim, despite Blackwell's contention that *Johnson* is incorrect.

¶4 Because Blackwell is not entitled to relief under *Blakely*, the trial court did not abuse its discretion by summarily dismissing her petition for post-conviction relief. Although we grant the petition for review, we deny relief.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge